

162855



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Order 2002-4-9

Served: April 12, 2002

**Issued by the Department of Transportation
on the 11th day of April, 2002**

**U.S.- TURKEY THIRD-COUNTRY
CODE-SHARE OPPORTUNITIES**

Docket OST-2002-11273

ORDER TO SHOW CAUSE

SUMMARY

By this order, we tentatively allocate Delta Air Lines (Delta) and United Air Lines (United) 7 weekly frequencies each to serve the U.S.-Turkey market, under code-share arrangements with third-country carriers.

BACKGROUND

On May 3, 2000, the United States and Turkey signed an open-skies agreement.¹ The new agreement permits U.S. carriers to provide unlimited bilateral code-share service immediately.² It provides for phased increases in third-country code-share services during a three-year transition period.

Based on actions we took during the first and second years of the transition, Delta, Northwest Airlines (Northwest) and United now hold authority to serve the U.S.-Turkey market via intermediate points with their respective code-share partners, Air France, KLM, and Lufthansa. Northwest and United is each allocated 14 weekly frequencies for their code-share services while Delta is allocated seven weekly code-share frequencies.

¹ The agreement entered into force on August 13, 2001.

² Pursuant to the provisions of that agreement, American Airlines offers service in the U.S.-Turkey market from New York and Chicago under its code-share arrangement with Turkish Airlines on the flights operated by Turkish Airlines. American and Turkish Airlines filed an application to expand their code-share arrangement. (Joint Application of American and Turkish Airlines, filed March 12, 2002, Docket OST-2000-7151). We will deal with that request separately.

for a total of 35 weekly code-share flights.³ Northwest and Delta serve Istanbul on their code-share services. United operates a daily flight in the U.S.-Istanbul market and a daily flight in the U.S.-Ankara market.

The 2000 agreement provides that during the third year of the transition period, effective April 1, 2002, two additional airlines may be authorized to provide third-country code-share service and 14 additional frequencies will be available to all authorized airlines. Effective April 1, 2003, there will be no restrictions on the operation of third-country code-share combination services.

By Notice dated January 4, 2002, we invited applications from U.S. carriers interested in using these opportunities.

APPLICATIONS

Applications were filed by Continental Airlines (Continental), Delta, and United. Continental proposes to inaugurate a new third-country code-share service with its partner, KLM, via Amsterdam, and requests 7 weekly frequencies to provide service between Newark and Istanbul. Delta proposes to inaugurate a new third-country code-share service with its partner, Alitalia-Linee Aeree Italiane (Alitalia), and seeks 7 weekly frequencies to offer this service between six U.S. cities and Istanbul via Milan. United proposes to expand its existing code-share service between the United States and Istanbul with Lufthansa and seeks 7 weekly frequencies to add a second daily flight for service between the United States and Istanbul via Frankfurt. All of the carriers have stated that they will begin service as soon as all the necessary government approvals are received. We have summarized certain significant aspects of the proposals in the attached Appendix.

Each of the carriers argues that its proposal will provide competitive benefits in the market and provide the best service opportunities to Turkey. Continental states that it is the only new entrant in the market and that its proposal will link KLM's twice daily Amsterdam-Istanbul flights with Continental's extensive U.S. network at Newark. Continental also states that Delta and United are both members of large immunized alliances and that small code shares, such as Continental/KLM, also require access to limited markets. Delta states that its proposal to provide code-share service with Alitalia via Milan will enhance Delta's U.S.-Turkey service and provide passengers with a new, attractive international connecting gateway choice and more transatlantic departures. Delta also states that it needs this authority so that it can operate twice daily service to Istanbul on a year-round basis. In this regard, Delta states that, following the events of September 11, it has had to reduce direct service during the winter season to a less than daily service, and that the additional code-share flight would ensure that Delta could operate year round twice-daily service. United states that its proposal for a second daily code-share flight between Frankfurt and Istanbul will offer shorter elapsed times in many markets and the only westbound departure in the afternoon.

³ See Orders 2000-7-25, 2000-8-17, 2001-5-4 and 2001-6-11.

RESPONSIVE PLEADINGS

All of the applicants filed answers and replies. The City of Chicago filed a reply in support of United.⁴

Delta and United argue that Continental's service proposal is the weakest since it serves only one U.S. point, Newark, and since New York already enjoys extensive service to Istanbul. They further argue that Continental proposes to code share on the same KLM flights between Amsterdam and Istanbul as those used by its alliance partner, Northwest, and the small aircraft used by KLM would limit the marketing opportunities of three carriers. Delta and United maintain that Continental is not so much a new entrant, but rather part of the Northwest/KLM alliance, and that Continental's proposal would essentially duplicate Northwest/KLM's existing service with no new service improvements. Furthermore, Delta and United argue that, contrary to Continental's claims, there would be no new benefits in service to U.S. points behind Continental's gateway since Continental and Northwest already code share on their domestic routes.

Continental argues that Delta and United already operate two daily flights in the Turkey market and that their proposals would provide duplicative service to Istanbul without adding a new domestic network. Accordingly, Continental maintains that it is the only applicant that would be a true new entrant to the market.

United states that Delta has the largest market share in the U.S.-Istanbul market and that the award of the only triple daily service to Delta would create a competitive imbalance among the airlines serving Turkey. It further states that United's proposal offers more service benefits in terms of U.S. cities receiving nonstop-to-nonstop connections and shorter elapsed times than Delta's proposal, and that Delta's existing services (nonstop and with Air France) offer better service than its proposal via Milan. Moreover, United argues that the merit of Milan as an additional intermediate point is a marginal supporting factor given the superiority of the existing connection points of Frankfurt, Amsterdam and Paris.

Delta notes that United currently uses seven of its allocated frequencies to serve the Ankara market. It suggests that United could also move these frequencies to the much larger Istanbul market and thus not need the frequencies at issue here. Delta also argues that United's claims of public benefits are inflated since it's proposal relies on the combined benefits of its proposed and existing service, and that, in fact, its proposed flights here make westbound connections to only three U.S. cities.

In its reply, United states that while Ankara is smaller than Istanbul, the Ankara market is still the second largest U.S.-Turkey market and that only United offers U.S. carrier on-line service in this underserved market, compared to Istanbul which receives numerous flights by U.S. carriers and Turkish Airlines.

⁴ The Houston Parties (City of Houston and the Greater Houston Partnership) filed an answer supporting the application of Continental to the extent that it proposed to serve the Houston-Istanbul market. Continental subsequently revised its application to withdraw its Houston service proposal.

TENTATIVE DECISION

We have tentatively decided to (1) select Delta and United to serve Turkey under their respective third-country code-share arrangements, and (2) allocate each 7 weekly frequencies to provide its service.

Based on our review of the proposals, we tentatively find that the selection of Delta and United will provide the greatest service improvements and will best enhance competition in the market.

Delta's code-share service with Air France offers on-line connecting service to 8 U.S. cities, throughout the United States, via Paris. Under its proposal here, it would serve 6 U.S. cities via Milan, affording passengers an additional service option via a new European intermediate point. In addition, two U.S. cities, Newark and Miami, would receive the first convenient, daily roundtrip service in the market from Delta.⁵

United currently offers connecting service to 15 U.S. cities and it proposes to serve 10 U.S. cities on its second Istanbul service via Frankfurt. While, as argued by some parties, United does not propose service to any new U.S. cities, its proposal would improve its U.S.-Istanbul service in several markets. Specifically, by code sharing on both its existing flight and the proposed flight, United would be able to improve its elapsed time by approximately four hours in six markets (Atlanta, Dallas/Ft. Worth, Detroit, Newark, Miami and Philadelphia).⁶ It would also improve its current elapsed time by up to nearly two hours in four other markets (Boston, Washington, New York and Chicago). Thus, awards to United and Delta would improve service to 10 U.S. cities, providing shorter elapsed travel time and/or new code-share service options.

We also tentatively find that the selection of Delta and United would increase competition in the U.S.-Turkey market and best enhance market structure. Awards to these carriers would provide competitive service at six U.S. cities under their proposals. The awards would enable both Delta and United to operate twice daily service in the U.S.-Istanbul market on a year-round basis. As Northwest also operates twice daily service in the U.S.-Istanbul market, three U.S. carriers could operate double daily Istanbul service, maximizing the level of competitive services in the market.

We have carefully examined Continental's proposal and find that it does not offer comparable public benefits to the proposals of United and Delta. Continental proposes to serve only one U.S. city, Newark, whereas Delta and United would serve considerably more U.S. cities. Furthermore, the New York area already enjoys nonstop Turkey service at JFK from two carriers, and two U.S. carriers (Northwest and United) currently provide third-country code-share service at Newark. Delta also proposes to provide a new code-share service option for Newark, as well as five other cities, under its proposal here with Alitalia via Milan. While we note that Continental's proposed Newark service would

⁵ Delta serves Miami in only one direction on its code-share service with Air France. See Delta's application dated January 28, 2002 (Exhibits DL-1 and DL-5).

⁶ See United's application dated January 28, 2002 (Exhibits UA-1, UA-2, and UA-3).

improve the elapsed travel time for passengers in the Newark market, it would do so by only one hour. United and Delta, on the other hand, would provide greater savings in elapsed travel time to more U.S. cities.

Nor are we persuaded that the selection of Continental would better improve market structure than the selection of Delta or United. Continental would add competitive service to only one U.S. city. Furthermore, while Continental would be a new entrant in the U.S.-Turkey market, a factor in its favor, we are not persuaded that this benefit outweighs the broader service and competitive benefits offered by the proposals of Delta and United. We note that the U.S.-Turkey market will be fully open in April 2003, enabling Continental as well as other carriers the opportunity to serve the market without restrictions.

ECONOMIC AUTHORITY

Delta and United already hold the necessary underlying economic authority to conduct their proposed services and, thus, additional underlying authority for these carriers would not be necessary.⁷ With respect to statements of authorization for the proposed code-share services, Delta and United have blanket statements of authorization for their code-share services with Alitalia and Lufthansa, respectively, and consistent with those authorizations, each has filed the required notice to provide third-country code-share services in the U.S.-Turkey market.⁸ Thus, the carriers would be able to begin such service upon completion of the carrier selection procedures here.

Consistent with our standard practice, we propose to subject the frequency allocations awarded in this case to the condition that if any frequencies are not used for a period of 90 days, the allocation as to those frequencies would expire automatically and the unused frequencies will revert automatically to the Department for reallocation. The 90-day dormancy period will begin on the date of the final order.

ACCORDINGLY,

1. We tentatively select Delta Air Lines, Inc., and United Air Lines, Inc., to provide scheduled foreign air transportation of persons, property, and mail in the U.S.-Turkey market under their code-share arrangements with Alitalia (via Milan) and Lufthansa (via Frankfurt), respectively, and tentatively allocate each carrier seven weekly frequencies for these services;
2. We direct all persons to show cause why we should not issue an order making final our tentative findings and conclusions;

⁷ Delta's certificate for Route 616 (Segment 3), route integration authority (Notice of Action Taken dated June 8, 2001, Docket OST-97-2338) and U.S.-Italy certificate authority (Route 789, issued by Order 2000-4-5). United's certificates for Routes 57 and 603 (Orders 83-3-77 and 91-2-5) and route integration exemption (Notice of Action Taken dated June 8, 2001, Docket OST-97-2126).

⁸ Delta/Alitalia Statements of Authorization (Notice of Action Taken dated October 26, 2001, Docket OST-01-10417) and United/Lufthansa Statements of Authorization (Order 98-4-8).

3. We direct interested persons wishing to comment on our findings and conclusions, or objecting to the issuance of the order described above, to file their comments or objections with the Department, Dockets, Docket OST-2002-11273, U.S. Department of Transportation, 400 Seventh Street, SW, Room PL-401, Washington, D.C. 20590, no later than 10 calendar days from the date of service of this order; answers thereto shall be filed no later than 5 calendar days thereafter;⁹
4. If timely and properly supported objections are filed, we will afford full consideration to the matters or issues raised by the objections before we take further action;¹⁰
5. If no objections are filed to our tentative decision in this order, we shall deem all further procedural steps to have been waived, and will proceed to enter a final order;
6. To the extent not tentatively granted, we tentatively deny all requests in the captioned docket; and
7. We will serve this order on Continental Airlines, Inc.; Delta Air Lines, Inc.; United Air Lines, Inc.; the City of Chicago; the Houston Parties; the Ambassador of Turkey in Washington, D.C.; the U.S. Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (AFS-220).

By:

SUSAN McDERMOTT
Deputy Assistant Secretary for
Aviation and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*

⁹ The original submission is to be unbound and without tabs on 8½" x 11" white paper using dark ink (not green) to facilitate use of the Department's docket imaging system. Alternatively, we encourage filers to use the electronic submission capability available through the Dockets/DMS Internet site (<http://dms.dot.gov>) by following the instructions at the web site.

¹⁰ As we are providing for the filing of objections to this tentative decision, we will not entertain petitions for reconsideration of this order.

U.S.-TURKEY THIRD-COUNTRY CODE-SHARE APPLICATIONS

Carrier	Code-Share Partner/Aircraft	Intermediate Point	Turkey Point	U.S. Points	Weekly Frequencies
Continental	KLM B-737/155 seats	Amsterdam	Istanbul	EWR	7
Delta	Alitalia MD-80/ 131 seats	Milan	Istanbul	6: ATL, BOS, CHI, EWR, MIA, NYC	7
United	Lufthansa A321/144 seats	Frankfurt	Istanbul	EB 10: ATL, BOS, CHI, DTW, DFW, MIA, WAS, EWR, NYC, PHL WB 3: BOS, CHI, NYC	7

Note: All the carriers propose to start up as soon as they receive the necessary governmental approvals.